

SUPREME COURT OF ARKANSAS

No. 12-477

CHRISTI CARR

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES AND MINOR
CHILDREN

APPELLEES

Opinion Delivered August 14, 2012

MOTION FOR RULE ON CLERK

GRANTED.

PER CURIAM

Christi Carr, by her attorney, Joshua R. Meister, has filed a motion for rule on clerk. On November 17, 2011, the circuit court entered its order terminating Carr's parental rights, and Carr timely filed her notice of appeal on November 30, 2011. Pursuant to Arkansas Supreme Court Rule 6-9(d) (2011), Carr's record was due by February 8, 2012; however, the record was not tendered to this court's clerk until May 21, 2012.

Mr. Meister asserts in the motion that he mailed the record to this court's clerk on January 28, 2012, and one month later, called the clerk to inquire whether the matter had been docketed for action, to which the clerk responded in the negative. Mr. Meister claims that despite his continued inquiry to the clerk's office over the next two months, his package was never received by this court's clerk. Accordingly, he has filed the instant motion on Carr's behalf and tendered the record.

This court clarified its treatment of motions for rule on clerk and motions for belated

appeals in *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004). There we said:

Where an appeal is not timely perfected, either the party or attorney filing the appeal is at fault, or there is good reason that the appeal was not timely perfected. The party or attorney filing the appeal is therefore faced with two options. First, where the party or attorney filing the appeal is at fault, fault should be admitted by affidavit filed with the motion or in the motion itself. There is no advantage in declining to admit fault where fault exists. Second, where the party or attorney believes that there is good reason the appeal was not perfected, the case for good reason can be made in the motion, and this court will decide whether good reason is present.

Id. at 116, 146 S.W.3d at 891 (footnote omitted). While this court no longer requires an affidavit admitting fault before we will consider the motion, an attorney should candidly admit fault where he or she has erred and is responsible for the failure to perfect the appeal. *See id.* When it is plain from the motion, affidavits, and record that relief is proper under either rule based on error or good reason, the relief will be granted. *See id.* If there is attorney error, a copy of the opinion will be forwarded to the Committee on Professional Conduct. *See id.*

It is plain from the motion that there was error on Mr. Meister's part in failing to timely file the record, as it was not the responsibility of the postal service to timely do so. Pursuant to *McDonald, supra*, we grant Carr's motion for rule on clerk and forward a copy of this opinion to the Committee on Professional Conduct.

Motion granted.